



24 CFR Parts 91 and 92

**[Docket No. FR 5792-F-03]
RIN 2501-AD69**

Changes to HOME Investment Partnerships (HOME) Program Commitment Requirement

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Final rule.

SUMMARY: This final rule follows HUD's interim final rule published on December 2, 2016.

The interim rule changed the method by which HUD determines participating jurisdictions' compliance with the statutory 24-month commitment requirements on the use of HOME Investment Partnerships program (HOME) funds, including the set-aside for community housing development organizations, under the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA). Specifically, it implemented a grant-specific method for determining compliance with such requirements. In addition, the interim rule revised the method of administering program income to prevent participating jurisdictions from losing allocated HOME funds when they expend program income. This rule finalizes the December 2, 2016, interim rule without change.

DATES: Effective: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW, Suite 7286, Washington, DC 20410; or at 202-708-2684 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

Under section 218(g) of the Cranston-Gonzalez National Affordable Housing Act of 1990¹ (42 U.S.C. 12701 *et seq.*) (NAHA), participating jurisdictions are required to place their HOME Investment Partnerships Program (HOME) funds under binding commitment within 24 months after the last day of the month in which HUD made the funds available (i.e., deposited the funds into the participating jurisdiction's HOME Investment Trust Fund ("HOME account")). Under section 218(g) of NAHA², a participating jurisdiction's right to draw HOME funds from its HOME account expires if the funds are not placed under binding commitment by the 24-month deadline. In addition, pursuant to section 231 of NAHA³, a participating jurisdiction must reserve not less than 15 percent of its HOME funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations (CHDOs). If any funds reserved under section 231 of NAHA remain uninvested for a period of 24 months, then HUD must deduct the uninvested funds from the line of credit in the participating jurisdiction's HOME account.

Prior to Fiscal Year (FY) 2015, HUD measured compliance with the 24-month requirement for committing funds, including CHDO set-aside funds, using a cumulative methodology. HUD also had a 5-year expenditure requirement for all participating jurisdictions that was measured using the cumulative methodology. Under HUD's cumulative methodology, HUD's Integrated Disbursement and Information System (IDIS) committed and disbursed funds on a first-in, first-out basis and participating jurisdictions were not required to designate funds from a specific FY allocation when committing HOME funds to a project. Consequently, HUD did not require participating jurisdictions to specify which grant year's funds they were committing to a specific project in IDIS.

¹ 42 U.S.C. 12748(g)

² *Id.*

³ 42 U.S.C. 12771.

On December 2, 2016 (81 FR 86947), HUD published an interim rule in the Federal Register to implement a grant-specific method for determining compliance with both the 24-month commitment and 24-month CHDO set-aside commitment deadlines, and to establish a method of administering program income that would prevent participating jurisdictions from losing appropriated funds when they expend program income. The interim rule also eliminated the 5-year expenditure requirement for participating jurisdictions (other than insular areas) for FY 2015 and later grant years and changed the manner in which program income and other funds in the local HOME account were treated.

The 24-month commitment requirement in section 218(g) of NAHA, however, was later suspended for HOME funds with 24-month deadlines occurring in 2016 through 2023 under section 242 of Title I of Division K of the Consolidated Appropriations Act, 2017.⁴ Specifically, the 2017 Appropriations Act stated: “Section 218(g) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12748(g)) shall not apply with respect to the right of a jurisdiction to draw funds from its HOME Investment Trust Fund that otherwise expired or would expire in 2016, 2017, 2018, or 2019 under this section.” The Consolidated Appropriations Act of 2019⁵ and subsequent appropriations acts⁶, also included a provision suspending the 24-month requirement for CHDO set-aside funds in section 231(b) of NAHA for “any uninvested funds that otherwise were deducted or would be deducted from the line of credit in the participating jurisdiction's HOME Investment Trust Fund” in 2018 through 2024. Consequently, HUD is currently not enforcing the 24-month commitment requirements for those grants covered by the suspensions. Despite the suspensions of sections 218(g) and 231(b) in recent appropriations acts, HUD is finalizing the interim rule as these suspensions may lapse in the future.

⁴ Pub. L. 115-31, 131 Stat. 135, 789.

⁵ Pub. L. 116-6, 133 Stat. 13, 464.

⁶ Pub. L. 115-141, 132 Stat. 348; Pub. L. 116-94, 133 Stat. 2534. Pub. L. 117-03, 136 Stat. 742

After considering the public comments submitted in response to HUD's interim rule, HUD is finalizing its December 2, 2016, interim rule without change. This final rule implements a grant-specific method of determining compliance with the HOME commitment deadlines. As discussed in HUD's interim rule, beginning with FY 2015 grants, a participating jurisdiction is required to select the grant year's funds that will be committed to a specific project or activity. When the participating jurisdiction requests a draw of grant funds for that project or activity, HUD, through IDIS, now disburses the specific grant year's funds committed to that project or activity, rather than the oldest funds available. This change requires participating jurisdictions to commit specific FY grant funds and for HUD to assess commitment deadline compliance on a grant-specific basis. This methodology change addresses the timely commitment and expenditure of program income, repaid funds, recaptured funds, and funds committed for programs to be administered by State recipients and subrecipients. Conforming changes are also made to the consolidated plan regulations with respect to program income, repaid funds, and recaptured funds.

II. Discussion of Public Comments and HUD's Responses

The public comment period for the interim rule closed on January 31, 2017, and HUD received seven public comments. Comments were largely submitted by development agencies. The following presents the significant issues and questions related to the interim rule raised by the commenters and HUD's responses to these issues and questions.

A. Comments of Support

The comments were generally supportive. One commenter stated that requiring additional project-specific information is a positive change. Other commenters praised the change eliminating the requirement to expend program income prior to drawing grant funds, stated that HUD has developed a reasonable approach to accounting for the commitment of program income and supported the elimination of the automatic cancellation of projects.

B. Cancellation of Funds

Issue: De-obligation of previously committed funds. Commenters stated that de-obligating funds when a project is cancelled or completed for less than the committed amount only penalizes participating jurisdictions for being responsible stewards of funds. The commenters encouraged HUD to allow the funds to be recommitted immediately and used within the expenditure deadline without being recaptured by HUD. Another commenter stated that grantees should have a grace period to recommit those funds, such as the commitment deadline for the next year's allocation.

HUD Response: HOME funds that become uncommitted for any reason after the funds have met their 24-month commitment deadline can be committed by the participating jurisdiction to another eligible HOME project or activity, provided the participating jurisdiction met the requirements for a commitment, including the definition of commitment at 24 CFR 92.2, at the time of the funds' 24-month commitment deadline.

C. Community Housing Development Organization (CHDO) Commitments

Issue: Elimination of cumulative method. A commenter stated that eliminating the cumulative method for determining compliance with the CHDO set-aside is impractical and will result in a significant loss of funds. The commenter stated that funding has declined recently and using the small amount of funds is very difficult, so jurisdictions wait and pool CHDO set-aside funds across multiple years. Eliminating the use of the cumulative method would essentially require at least some participating jurisdictions to work solely with CHDOs to have sufficient project dollars for the projects funded by CHDO set-aside funds.

HUD Response: The Department is aware of the challenges that the elimination of the cumulative method of measuring compliance with the 15 percent CHDO set-aside requirement may cause. Rather than committing less than 15 percent in some years and more than 15 percent in other years so that 15 percent of cumulative HOME allocations are used for CHDO projects, each participating jurisdiction is now required to commit a minimum of 15 percent of each grant year's allocation or HUD will recapture the funds. While the Department lacks statutory

authority to use the cumulative method in determining compliance with the 15 percent CHDO set-aside requirement, Congress recognized these challenges and responded by suspending the application of section 231(b) of NAHA to CHDO set-aside funds that were or would be deducted in 2018 through 2024 and section 218(g) of NAHA to remove the expiration of funds with 24-month commitment deadlines in 2016 through 2024. Since the suspension of sections 218(g) and 231(b) of NAHA relieves participating jurisdictions of the obligation of committing funds to projects within 24 months, the combined effect of the suspensions allows participating jurisdictions to have a longer period of time to accumulate enough CHDO set-aside funds to commit to a CHDO project. The suspension of section 231(b) of NAHA also removes the requirement that participating jurisdictions reserve CHDO set-aside funds to be used for projects owned, developed, or sponsored by CHDOs for more than 24-months from the date the funds are made available. This allows participating jurisdictions to use CHDO set-aside funds for non-CHDO HOME projects after the end of the 24-month CHDO set-aside time period defined in section 231 of NAHA.

Issue: Elimination of CHDO set-aside. A commenter also supported eliminating the CHDO set-aside.

HUD Response: Elimination of the CHDO set-aside would require an amendment to NAHA.

D. Commitment Deadline

Issue: Difficult to meet. A commenter stated that the 24-month commitment deadline is very difficult to meet, and the new rule does nothing to change it. Another commenter supported the elimination of the 24-month commitment deadline.

HUD Response: The 24-month deadline for committing HOME funds is a statutory requirement in section 218(g) of NAHA. Eliminating the requirement therefore requires a statutory amendment. In recent appropriations acts, Congress recognized the issues with the 24-month commitment deadline in section 218(g) by suspending the commitment requirement for

HOME funds with deadlines occurring in 2016 through 2024. Congress also suspended section 231(b) of NAHA to permit participating jurisdictions to retain CHDO set-aside funds that were or would otherwise be deducted from a participating jurisdiction's HOME account in 2018, 2019, 2020, 2021, 2022, 2023, or 2024.

Issue: Notification. A commenter stated that HUD should notify all grantees as soon as possible of the amounts of prior year funds that must be committed, what the deadline is, and what the penalty for failure to meet the deadline is.

HUD Response: Participating jurisdictions have real time access to this information in IDIS. Under 24 CFR 92.504(a), participating jurisdictions are responsible for monitoring their progress toward meeting this and other HOME program deadlines.

E. Expenditure Deadline

Issue: Simplification and elimination. A commenter supported the simplification of expenditure deadlines and supported the elimination of the 5-year expenditure deadline.

HUD Response: Under the terms of the interim rule and this final rule, there is no 5-year expenditure deadline for participating jurisdictions (other than insular areas) for FY 2015 and subsequent allocations. The last application of the expenditure deadline for most participating jurisdictions occurred in 2019.

F. Expiration of Funds

Issue: Expiration of funds. A commenter asked HUD for confirmation that the period of performance is retroactive so that the period of performance for FY 2015 grants ends on September 1, 2024, and the period of performance for FY 2016 grants ends on September 1, 2025.

HUD Response: The period of performance for HOME grants is specified on the Funding Approval and HOME Investment Partnerships Agreement (HUD-40093) between HUD and the participating jurisdiction. The period of performance for FY 2015 grants ends on September 1, 2023, and the period of performance for FY 2016 grants ends on September 1,

2024. These dates provide participating jurisdictions with time prior to the cancellation of the grants on September 30, 2023, and September 30, 2024, respectively, to draw down funds for costs incurred during the period of performance before the funds will be returned to the U.S. Treasury.

G. Program Income

Issue: Timing for entering program income into the IDIS. Commenter asked whether program income is to be entered into the IDIS at the time of receipt or when it is reported in the annual action plan.

HUD Response: A participating jurisdiction's program income must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account pursuant to 24 CFR 92.503(a) and reported in IDIS at the time it is received. If a participating jurisdiction's written agreement permits the state recipient or subrecipient to retain program income, then the program income must be reported in IDIS at the time it is received by the state recipient or subrecipient. If a participating jurisdiction permits a state recipient or subrecipient to retain program income, then the participating jurisdiction is still responsible for requiring that this information be entered into IDIS. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility, but a State participating jurisdiction may rely upon a state recipient for compliance with recordkeeping requirements under 24 CFR 92.508(a)(5)(iii) and (b) and need not duplicate such efforts.

Issue: Conflict with Department of Treasury. A commenter asked whether there is a conflict with the Department of Treasury in allowing a participating jurisdiction to accumulate expenditure of program income, as Treasury requires program income to be expended first.

HUD Response: Due to HOME funds' statutory 24-month commitment deadline, HUD established requirements for HOME program income that differ from those applicable to other Federal grant programs. Requiring participating jurisdictions to expend program income first places an additional barrier to committing allocated HOME funds by the 24-month commitment

deadline. Therefore, HUD determined that the revised provisions for program income in the interim rule and finalized in this final rule are necessary so that participating jurisdictions can avoid losing allocated HOME funds that are subject to the 24-month commitment deadline.

Issue: Loss of appropriated funds. A commenter stated that HUD must prevent participating jurisdictions from losing appropriated HOME funds when they expend program income.

HUD Response: HUD agrees and established provisions in the interim rule and final rule to ensure that participating jurisdictions do not lose allocated HOME funds subject to the 24-month commitment deadline because they have expended program income.

III. Findings and Certifications

Information Collection Requirements

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0171.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

When the interim rule was published, a Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42

U.S.C. 4332(2)(C)). Because this rule finalizes the interim rule without change, the previous FONSI remains applicable.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As discussed, this regulation changes the manner in which HUD measures compliance with the statutory 24-month commitment deadline in the HOME program and does not alter the manner in which participating jurisdictions administer their HOME programs. Given this fact, HUD anticipates the regulatory changes will have minimal, or no, economic impacts.

Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program that would be affected by this rule is 14.239.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the interim rule amending 24 CFR parts 91 and 92 that was published at 81 FR 86947 (December 2, 2016) is adopted as final without change.

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Principal Deputy Assistant Secretary
for Community Planning and Development

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